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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOHN DOE, an individual,
vs.

KEVIN SPACEY FOWLER, an
individual, M. PROFITT
PRODUCTIONS, INC., a California
Corporation, and DOES 1-9, inclusive.
Defendants.

**Case No.: 2:19-CV-00750-RSWL
(SSx)**

**PLAINTIFF'S REPLY TO
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
LEAVE TO PROCEED
ANONYMOUSLY**

**Hon. Ronald S.W. Lew
Date: April 16, 2019
Time: 10:00 A.M.
Suite: TBD**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants Kevin Spacey Fowler (“Spacey”) and M. Proffitt Productions, Inc. (“M.
4 Proffitt”) (collectively, “Defendants”) object to permitting Plaintiff John Doe (“Plaintiff”
5 or “DOE”) to proceed anonymously at this infant stage simply because they want to wage
6 a war with Plaintiff in the court of public opinion and punish him for bringing suit against
7 a powerful celebrity. It is almost certain that Defendants will seek to stay discovery and
8 prosecution of this action pending the criminal proceedings against Defendant Spacey for
9 sexual assault and battery, mooted any argument that Defendants are prejudiced in any
10 way by Plaintiff’s anonymity at this time. Plaintiff respectfully seeks leave from this
11 Court to proceed anonymously in this action to protect him from the very harm
12 Defendants intentionally seek to inflict upon him—serious harassment, financial,
13 physical, and emotional injury, ridicule and personal embarrassment.

14 **II. DEFENDANTS ARE NOT PREJUDICED**

15 **A. Plaintiff’s Anonymity Does Not Prejudice Defendants at the Pleading Stage**

16 As articulated by the Ninth Circuit in *Advanced Textile*, in analyzing whether a
17 party may preserve anonymity in judicial proceedings, the Court must determine the
18 precise prejudice *at each stage of the proceedings*, not merely prejudice generally
19 throughout the entire case, to determine “whether proceedings may be structured so as to
20 mitigate that prejudice.” *Doe v. Advanced Textile Corp.*, 214 F.3d 1058, 1067-68 (9th
21 Cir.).

22 Defendants’ Opposition to Plaintiff’s Motion for Leave to Proceed Anonymously
23 (“Opposition”) is devoid of any evidence or argument related to prejudice *at the pleading*
24 *stage*. [D.E. 37]. Defendants have not asserted an inability to answer Plaintiff’s
25 anonymous complaint. Thus, it is undisputed that Defendants are not prejudiced in this
26 litigation at this stage, as both can admit or deny the allegations against them without
27 revealing Plaintiff’s name.

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B. Defendants' Arguments about Prejudice in Discovery are Premature

Reading between the lines in Defendants' recent *ex parte* application and its current Opposition, Defendants' opposition to anonymity is not about unfair prejudice in "discovery" available to the *typical* defendant. [D.E. 31 (Defendant Fowler's *Ex Parte* Application); D.E. 37]. Instead, Defendants oppose anonymity because it impairs their ability to unfairly play to the court of public opinion and use the tabloids, media, and the internet to harm Plaintiff DOE.

While Defendants' arguments are couched in their inability to conduct "discovery" [D.E. 37, pp. 2:2; 7:3-4], arguments related to discovery available to a *typical* defendant are premature at this pleading stage [D.E. 19 (Plaintiff's Motion for Leave to Proceed Anonymously ("Motion")), p. 4:21-25] for two reasons: (i) because no discovery can occur until after the Rule 26(f) conference; and (ii) Defendant Spacey will likely move to stay this case pending the disposition of sexual assault criminal proceedings against him in Nantucket District Court. [D.E. 19, p. 4:21-25]. Therefore, unless Defendants reject an intent to stay discovery and prosecution of this matter, discovery in the *typical* sense will not be available to either party and unlikely to occur soon.

The "discovery" which Defendants seek and is impaired by Plaintiff's anonymity is the *atypical*, *extraordinary*, and *special* type of harmful "discovery" available only to high-profile celebrities like Defendant Spacey, and he has shown that he is not above using tabloids, media, and the internet for his personal gain. Just this past Christmas-Eve, Defendant Spacey publicly released an odd video on YouTube¹ entreating the public for support against the many accusations of sexual assault and battery against him. In line with his statements in that bizarre and threatening video that "nothing should be off the table" and that he has "[n]ever played by anyone's rules before", in this case, Defendant Spacey already attempted to circumvent the process and rules which provide the parties and the court a full and fair opportunity to consider the subject Motion for leave to

¹ Kevin Spacey, Let Me Be Frank, YouTube, Dec. 24, 2018, at <https://www.youtube.com/watch?v=JZveA-NAIDI> (last visited on March 24, 2019).

1 proceed anonymously and, instead, improperly sought premature disclosure of Plaintiff's
 2 anonymity through an *ex parte* application to this Court. [D.E. 34 (Order re: Defendant
 3 Fowler's *Ex Parte* Application for an Order to Set Deadlines Under Rule 26), p. 5:10-16].
 4 Defendant Spacey's threatening video, his *ex parte* application seeking to reveal
 5 Plaintiff's identity, and his repeated statements about *especially* wanting *third-party*
 6 *discovery* [D.E. 37, pp. 2:2-3, 7:3-4] in this case are additional grounds for why
 7 anonymity is needed at this stage.

8 Since no *typical* legal discovery, where the parties are interested in obtaining record
 9 evidence, is likely to take place soon because of the pending the sexual assault criminal
 10 proceedings against Defendant Spacey in Nantucket District Court [D.E. 19, p. 4:21-25],
 11 Defendant's so-called prejudice in discovery is premature and disingenuous. Defendants'
 12 real opposition to Plaintiff's anonymity is that it frustrates their one-sided media strategy
 13 designed to pummel and punish Plaintiff for bringing his claim.

14 While there may be a time when public disclosure of Plaintiff's name is necessary
 15 and he must endure the ensuing publicity, now is not the time. Until this case reaches the
 16 stage where public disclosure is necessary, Plaintiff respectfully requests that the Court
 17 protect him from such gamesmanship and the harm which will result from the media
 18 frenzy.

19 III. SPECIAL CIRCUMSTANCES WARRANT ANONYMITY

20 First, Plaintiff's Motion included evidence and argument about why Plaintiff's
 21 anonymity, at this stage, is necessary to prevent him from harassment, injury, ridicule and
 22 personal embarrassment. [See *generally*, D.E. 19]. Regarding the specific *threatened*
 23 harms and *claimed* fears and *vulnerability* to retaliation as required by *Advanced Textiles*,
 24 Plaintiff articulated these special circumstances and facts:

- 25 i. Plaintiff works as a private masseuse, which typically places him alone with
 26 clients in their homes or hotel rooms [D.E. 19, p. 3:7-8];
- 27 ii. In the instances of first-time clients, Plaintiff works in the vulnerable
 28 position of entering a stranger's home or hotel room, which is the same

1 highly vulnerable position that enabled Defendants to attack and injure
2 Plaintiff in this case [D.E. 19, p. 3:5-11];

- 3 iii. Plaintiff is the primary financial supporter for him and his adult son [D.E.
4 19, p. 3:14-17];
- 5 iv. Plaintiff reasonably fears that public disclosure of his identity will cause a
6 loss of his celebrity clientele and impair his ability to make a living [D.E. 19,
7 p. 3:14-17];
- 8 v. Defendant is a high-profile celebrity who, unlike a typical party, has the
9 power to (mis)use the court of public opinion [D.E. 19, p. 3:19-22]; and
- 10 vi. Defendant has already publicly released an odd video on YouTube [*supra*,
11 n. 1] entreating public for support against the accusations of sexual assault
12 and battery against him.

13 This request for anonymity is about *preventing* injury based on *threatened* harms,
14 *claimed* fears, and *vulnerability* to retaliation. While Plaintiff has already been attacked
15 by Defendants because of Defendants' misuse of power and the vulnerabilities of
16 Plaintiff's job, a second attack is unnecessary to obtain this Court's protection from
17 further physical, emotional, and economic injury. *Advanced Textiles*, 214 F.3d at 1067-
18 68.

19 It takes tremendous courage to come forward against a public figure like Defendant
20 Spacey. Making a claim based upon a sexualized attack by a high-profile celebrity is
21 exponentially invasive and difficult, largely because of the public scrutiny that will ensue
22 about facts which are intimate and personal.

23 While it should not be a point of contention that Plaintiff should be protected from
24 further attacks, ridicule, humiliation, or harassment, Defendants' desire to shove Plaintiff
25 into the public spotlight to cause him physical, emotional, and/or financial harm as
26 punishment for speaking out is clear through its Opposition, recent *ex parte* application,
27 and YouTube video.

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1 While suing a high-profile celebrity comes with media attention [D.E. 19, p. 3:19-
2 25], because Defendants will likely stay discovery and prosecution of this matter, there is
3 no good cause to begin that process now when it will injure Plaintiff. When the time
4 comes for obtaining record evidence through the discovery rules typical in a lawsuit, the
5 parties and the Court should revisit the issue.

6 **IV. THE PUBLIC INTEREST IS SATISFIED**

7 Anonymity does not obstruct the public's view of the issues or prevent the public
8 from viewing the filings. To date, no documents have been filed under seal or shielded
9 from public view. Plaintiff publicly filed the documents including his amended complaint
10 [D.E. 14], which includes details about Plaintiff's gender, profession, the longevity of his
11 career, which reveals his approximate age, and details about the sexualized attack. [D.E.
12 14]. The only detail which Plaintiff requests be shielded from public disclosure is his
13 name, in which the public has negligible interest.

14 And the cases relied upon in Defendants' Opposition on this issue are inapposite.
15 In *Shakur*, unlike in this case, the press already knew the plaintiff's name. *Doe v. Shakur*,
16 164 F.R.D. 359, 362 (S.D.N.Y. 1996). In *Kamehameha*, despite the importance of open
17 courts, the appellate court recognized that it likely would not have found an abuse of
18 discretion had the trial court permitted the plaintiffs to proceed anonymously. *Doe v.*
19 *Kamehameha Schools*, 596 F.3d 1036,1046 (9th Cir. 2010) ("Had the district court found
20 that anonymity was appropriate, we likely would have concluded that the district court
21 did not abuse its discretion."). Moreover, in the other cases cited by Defendants,
22 including *Texaco*, those courts were concerned about impairing the defendant's ability to
23 mount a defense. See, e.g., *Doe v. Texaco, Inc.*, 2006 WL 2850035, *6 (N.D. Cal. 2006)
24 (weighing the fact that as the case *moved forward*, defendants would need to mount a
25 defense to plaintiff's claims). None of the cases cited in Defendants' Opposition had the
26 unique situation at issue here where defendants were likely to seek a stay of discovery
27 and delay prosecution of this matter. [D.E. 19, p. 4:21-25]. If Defendants intend to stay
28 discovery and delay prosecution, Defendants have no need to defend themselves at this

1 junction.

2 Moreover, the public's interest in seeing this case and all sexual assault cases
3 against high profile individuals decided on their merits should dominate. The public
4 nature of litigation coupled with the media attention garnered when celebrities are
5 involved in allegations of sexual assault and battery often chills a plaintiff's willingness
6 to publicly bring a claim as it reveals victims at their most vulnerable. Structuring
7 proceedings to protect anonymity of the victim to the furthest extent possible is one way
8 to lessen that chilling effect, protect victims who report attacks which enable
9 investigations and bring abusers to justice, and protect others from similar harm. Because
10 of all the circumstances, the public's interest is satisfied without revealing the Plaintiff's
11 identity at this stage.

12 **V. CONCLUSION**

13 For all of the foregoing reasons and the reasons articulated in Plaintiff's Motion,
14 Plaintiff asks this Court to use its discretion to protect Plaintiff from harassment, injury,
15 ridicule, and personal embarrassment, protect his privacy, and minimize public exposure
16 at this stage, by granting him leave to proceed anonymously.

18 **DATED: April 2, 2019**

Genie Harrison Law Firm, APC

20
21 By: Mary Olszewska

**Genie Harrison, Esq.
Mary Olszewska, Esq.
Amber Phillips, Esq.**

Attorneys for PLAINTIFF JOHN DOE

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 523 West 6th Street, Suite 707, Los Angeles, California 90014.

On **April 2, 2019**, I caused the service of the following document described as:

**PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO PROCEED ANONYMOUSLY**

on all interested parties in this action through service by SERVED BY CM/ECF.

I hereby certify that, on April 2, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

The filing of the foregoing document will send copies to the following CM/ECF participants who are currently on the list to receive e-mail notices for this case:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Carla Medina